

Todd M. Friedman (SBN 216752)  
Adrian R. Bacon (SBN 280332)  
Meghan E. George (SBN 274525)  
Tom E. Wheeler (SBN 308789)  
LAW OFFICES OF TODD M. FRIEDMAN, P.C.  
21550 Oxnard St., Suite 780  
Woodland Hills, CA 91367  
Phone: 877-206-4741  
Fax: 866-633-0228  
[tfriedman@toddflaw.com](mailto:tfriedman@toddflaw.com)  
[abacon@toddflaw.com](mailto:abacon@toddflaw.com)  
[mgeorge@toddflaw.com](mailto:mgeorge@toddflaw.com)  
[twheeler@toddflaw.com](mailto:twheeler@toddflaw.com)  
***Attorneys for Plaintiff***

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STEVE GALLION, individually and on ) Case No.

behalf of all others similarly situated,

## CLASS ACTION

**Plaintiff.**

) **COMPLAINT FOR VIOLATIONS**  
)) **OF:**

VS.

AMERICA'S HEALTH OPTIONS,  
LLC, and DOES 1 through 10,  
inclusive, and each of them.

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
  2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

Defendant.

**DEMAND FOR JURY TRIAL**

Plaintiff STEVE GALLION (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

## **NATURE OF THE CASE**

1. Plaintiff brings this action individually and on behalf of all others

1 similarly situated seeking damages and any other available legal or equitable  
 2 remedies resulting from the illegal actions of AMERICA'S HEALTH OPTIONS,  
 3 LLC ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff  
 4 on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection  
 5 Act, 47. U.S.C. § 227 *et seq.* ("TCPA") and related regulations, thereby invading  
 6 Plaintiff's privacy and causing her to incur unnecessary and unwanted expenses.

#### JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff,  
 a resident of California, seeks relief on behalf of a Class, which will result in at  
 least one class member belonging to a different state than that of Defendant, a  
 Delaware company. Plaintiff also seeks up to \$1,500.00 in damages for each call  
 in violation of the TCPA, which, when aggregated among a proposed class in the  
 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.  
 Therefore, both diversity jurisdiction and the damages threshold under the Class  
 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central  
 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does  
 business within the State of California and Plaintiff resides within the County of  
 San Bernadino.

#### PARTIES

4. Plaintiff, STEVE GALLION ("Plaintiff"), is a natural person residing  
 in San Bernando, California and is a "person" as defined by 47 U.S.C. § 153 (39).

5. Defendant, AMERICA'S HEALTH OPTIONS, LLC ("Defendant"),  
 is an insurance agency, and is a "person" as defined by 47 U.S.C. § 153 (39).

6. The above named Defendant, and its subsidiaries and agents, are  
 collectively referred to as "Defendants." The true names and capacities of the  
 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are  
 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious

1 names. Each of the Defendants designated herein as a DOE is legally responsible  
2 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the  
3 Complaint to reflect the true names and capacities of the DOE Defendants when  
4 such identities become known.

5       7. Plaintiff is informed and believes that at all relevant times, each and  
6 every Defendant was acting as an agent and/or employee of each of the other  
7 Defendants and was acting within the course and scope of said agency and/or  
8 employment with the full knowledge and consent of each of the other Defendants.  
9 Plaintiff is informed and believes that each of the acts and/or omissions complained  
10 of herein was made known to, and ratified by, each of the other Defendants.

#### FACTUAL ALLEGATIONS

12       8. Beginning in or around April of 2018, Defendant contacted Plaintiff  
13 on Plaintiff's cellular telephone number ending in -6963, in an attempt to solicit  
14 Plaintiff to purchase Defendant's services.

15       9. Defendant contacted or attempted to contact Plaintiff from telephone  
16 number (910) 830-0147 confirmed to belong to Defendant.

17       10. When Plaintiff would answer Defendant's call, Plaintiff would hear  
18 an automated recorded message followed by a prompt to press "1" in order to be  
19 connected to a live employee for more information.

20       11. Defendant used an "automatic telephone dialing system" as defined  
21 by 47 U.S.C. § 227(a)(1) to place its call to Plaintiff seeking to solicit its services.

22       12. Defendant's calls constituted calls that were not for emergency  
23 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

24       13. Defendant's calls were placed to telephone number assigned to a  
25 cellular telephone service for which Plaintiff incurs a charge for incoming calls  
26 pursuant to 47 U.S.C. § 227(b)(1).

27       14. During all relevant times, Defendant did not possess Plaintiff's "prior  
28 express consent" to receive calls using an automatic telephone dialing system or an

artificial or prerecorded voice on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

15. Defendant placed multiple calls soliciting its business to Plaintiff on his cellular telephone ending in -6963 beginning in or around April of 2018 and continuing for several months.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

17. Plaintiff received numerous solicitation calls from Defendant within a 12-month period.

18. Upon information and belief, and based on Plaintiff's experiences of being called by Defendant despite having no prior relation to Plaintiff whatsoever, and at all relevant times, Defendant failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

## **CLASS ALLEGATIONS**

19. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member of the proposed class (hereinafter, "The Class"), defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

20. Plaintiff represents, and is a member of, The Class, consisting of all persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through

1 the use of any automatic telephone dialing system or an artificial or prerecorded  
2 voice and such person had not previously not provided their cellular telephone  
3 number to Defendant within the four years prior to the filing of this Complaint.

4       21. Defendant, its employees and agents are excluded from The Class.  
5 Plaintiff does not know the number of members in The Class, but believes the  
6 Class's members number in the thousands, if not more. Thus, this matter should  
7 be certified as a Class Action to assist in the expeditious litigation of the matter.

8       22. The Class is so numerous that the individual joinder of all of its  
9 members is impractical. While the exact number and identities of The Class  
10 members are unknown to Plaintiff at this time and can only be ascertained through  
11 appropriate discovery, Plaintiff is informed and believes and thereon alleges that  
12 The Class includes thousands of members. Plaintiff alleges that The Class  
13 members may be ascertained by the records maintained by Defendant.

14       23. Plaintiff and members of The Class were harmed by the acts of  
15 Defendant in at least the following ways: Defendant illegally contacted Plaintiff  
16 and The Class members via their cellular telephones thereby causing Plaintiff and  
17 The Class members to incur certain charges or reduced telephone time for which  
18 Plaintiff and The Class members had previously paid by having to retrieve or  
19 administer messages left by Defendant during those illegal calls, and invading the  
20 privacy of said Plaintiff and The Class members.

21       24. Common questions of fact and law exist as to all members of The  
22 Class which predominate over any questions affecting only individual members of  
23 The Class. These common legal and factual questions, which do not vary between  
24 Class members, and which may be determined without reference to the individual  
25 circumstances of any Class members, include, but are not limited to, the following:

26           a. Whether, within the four years prior to the filing of this  
27                   Complaint, Defendant made any telemarketing/solicitation call  
28                   (other than a call made for emergency purposes or made with

the prior express consent of the called party) to a Class member using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and The Class members were damaged thereby, and the extent of damages for such violation; and
  - c. Whether Defendant should be enjoined from engaging in such conduct in the future.

25. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.

26. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.

27. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class's member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

28. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical

matter, be dispositive of the interests of the other Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

29. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

## **FIRST CAUSE OF ACTION**

## Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

## **On Behalf of The Class**

30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

31. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

32. As a result of Defendant's negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

33. Plaintiff and The Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection**

Act

47 U.S.C. §227(b)

## **On Behalf of The Class**

34. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-29.

35. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

36. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and The Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

37. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

## **PRAAYER FOR RELIEF**

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

## **FIRST CAUSE OF ACTION**

## **Negligent Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and The Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
  - Any and all other relief that the Court deems just and proper.

## **SECOND CAUSE OF ACTION**

## **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

47 U.S.C. §227(b)

- As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and The Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47

1           *U.S.C. §227(b)(3)(C).*

- 2           • Any and all other relief that the Court deems just and proper.

3           **JURY DEMAND**

4       38. Pursuant to the Seventh Amendment to the Constitution of the United  
5       States of America, Plaintiff is entitled to, and demands, a trial by jury.

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8       Respectfully Submitted this 3rd Day of October, 2018.

9           LAW OFFICES OF TODD M. FRIEDMAN, P.C.

10          By: /s/ Todd M. Friedman  
11           Todd M. Friedman  
12           Law Offices of Todd M. Friedman  
13           Attorney for Plaintiff